

**A RESOLUTION approving a Waiver of Noncompliance
for a Late-Filed Application for the Deduction from
Assessed Valuation Real Property Vacant Building
Deduction (Form 322/VBD) for 6201 Discount Drive,
(Cyco Properties, LLC**

WHEREAS, Common Council has previously designated and declared by Declaratory Resolution and Confirming Resolution property at 6201 Discount Drive for Cyco Properties, LLC (Confirming Resolution R-87-12) under Sections 153.13-153.24 of the Municipal Code of the City of Fort Wayne, Indiana, and I.C. 6-1.1-12.1; and

WHEREAS, the original Statement of Benefits and economic revitalization area designation application submitted by Cyco Properties, LLC and approved under Confirming Resolution R-87-12 was for \$100,000 in real property improvements, \$36,000 in personal property improvements and occupation of an eligible vacant building; and

WHEREAS, construction of the real property improvements for Cyco Properties, LLC was completed in April 2013; and

WHEREAS, representatives of Cyco Properties, LLC have informed the City of Fort Wayne that their application for deduction from assessed valuation real property vacant building deduction in economic revitalization areas (322 /VBD) was not filed in a timely manner; and

WHEREAS, this oversight was an unusual occurrence for Cyco Properties, LLC; and

WHEREAS, the Common Council finds that Cyco Properties, LLC has fulfilled its pledge to make improvements to the facility and install new logistical distribution and information technology equipment; and

WHEREAS, Cyco Properties, LLC has retained its workforce as reported on the approved statement of benefits forms; and

WHEREAS, the Common Council acknowledges that Cyco Properties, LLC has requested a waiver of non compliance which the Common Council has the power and authority to approve, under I.C. 6-1.1-12.1-9.5 and I.C. 6-1.1-12.1-11.3; and

WHEREAS, the Common Council intends that Cyco Properties, LLC receive the tax abatement benefits to which they would have been entitled had no non compliance event occurred, so long as the waiver of non compliance and the granting of those benefits does not prejudice the City of Fort Wayne; and

1 **WHEREAS**, the Common Council has concluded that granting of the ERA deduction
2 for 2013 payable 2014 tax year would not create a strain on the City of Fort Wayne's fiscal
3 budget; and

4 **WHEREAS**, I.C. 6-1.1-12.1-9.5 and I.C. 6-1.1-12.1-11.3 permit tax abatement non
5 compliance events such as the untimely filing of deduction application paperwork to be
6 waived; and

7 **WHEREAS**, the noncompliance event has been corrected and a public hearing of
8 the Common Council has been held on the waiver.

9
10 **NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF
11 FORT WAYNE, INDIANA:**

12 **SECTION 1.** That, Common Council hereby waives all clerical and technical errors
13 and nonconformities that are waiveable under State and local law, including without limitation
14 those errors and nonconformities described in I.C. 6-1.1-12.1-9.5 and I.C. 6-1.1-12.1-11.3.

15 **SECTION 2.** As authorized by I.C. 6-1.1-12.1-9.5(d), the Common Council will
16 permit Cyco Properties, LLC to receive the lost vacant building deduction amount in
17 accordance with the following schedule

Tax Year	Real Property Tax Deduction Amount
2013 pay 2014	\$319,800.00
TOTAL	\$319,800.00

18 The foregoing numbers represent deductions from assessed valuation from occupation of an
19 eligible vacant building, not tax liability. The total deduction amounts set forth in the
20 preceding table represent deductions Cyco Properties, LLC will lose in 2013 payable 2014.
21 The Allen County Auditor and Allen County Assessor shall be supplied with a copy of this
22 Resolution, upon passage, and instructed to apply the deduction amounts in accordance with
23 this schedule. This resolution shall have no effect on the assessed value, tax abatement
24 deductions, or taxes payable with respect to Cyco Properties, LLC's personal property or real
25 property as a result of the improvements to the property carried out in 2012 and 2013
26 approved under Confirming Resolution R-87-12.

27 **SECTION 3.** That, this Resolution shall be in full force and effect from and after its
28 passage and any and all necessary approval by the Mayor.

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Member of Council

APPROVED AS TO FORM AND LEGALITY

Carol Helton, City Attorney

Admn. Appr. _____

DIGEST SHEET

TITLE OF RESOLUTION: Resolution Approving a Waiver of Noncompliance for a Late-Filed Application for the Deduction from Assessed Valuation Real Property Vacant Building Deduction (Form 322/VBD) for Cyco Properties, LLC

DEPARTMENT REQUESTING RESOLUTION: Community Development Division

SYNOPSIS OF RESOLUTION: This is to approve a waiver of noncompliance for late-filed vacant building deduction forms for Cyco Properties, LLC.

EFFECT OF PASSAGE: Approval of this resolution and granting of a waiver of noncompliance will allow Cyco Properties, LLC to recoup their vacant building deduction that it may lose in 2014 due to late filed deduction forms.

EFFECT OF NON-PASSAGE: Potential loss of future development by Cyco Properties, LLC

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS): No expenditures of public funds required.

ASSIGNED TO COMMITTEE (CO-CHAIRS): Tom Smith and John Crawford

Memo

Date: September 18, 2013
To: Fort Wayne Common Council
From: Elissa McGauley, Economic Development Specialist, COMMUNITY DEVELOPMENT DIVISION *Emc*
CC: Greg Leatherman, Deputy Director Development, COMMUNITY DEVELOPMENT DIVISION
RE: Waiver of Noncompliance

Community Development Division staff has submitted a resolution that requests the granting of a waiver of noncompliance for late-filed vacant building property tax deduction forms for CYCO Properties, LLC. Approval of this resolution and the granting of a waiver of noncompliance will allow the company to receive the vacant building property deductions that it will lose next year due to the late filed deduction paperwork. Following is an overview of the filing requirements for the vacant building property tax deduction and the granting of waivers of noncompliance as well as the background and issues for this company.

ECONOMIC REVITALIZATION AREA FILING REQUIREMENTS

As prescribed in I.C. 6-1.1-12.1-5, I.C. 6-1.1-12.1-5.1, and I.C. 6-1.1-12.1-5.3 taxpayers who have approved economic revitalization area designations for tax abatement on real, personal property and/or vacant buildings must file with both the designating body and the county auditor and/or township assessor state-prescribed deduction and compliance forms in order to receive tax abatement. Compliance and deduction forms are normally filed after completion of the real property improvements, installation of equipment and occupancy of the vacant building. The standard filing date for this paperwork is May 15th of each year of the abatement. For projects involving vacant building or real property deductions, the initial deduction forms are filed once a taxpayer approved for tax abatement receives a notice of new assessment, called a Form 11, from the county assessor's office. The deduction form (called a 322/RE for real property improvements and 322/VBD for vacant building deduction) is due to the county auditor no later than 30 days from the date on the notice of new assessment. If the paperwork is filed late, the taxpayer may lose one or more years of deduction from real property taxes (tax abatement). For projects involving personal property improvements, the deduction forms are filed each year of the tax abatement. The deduction form (103 ERA) is due to the county assessor on May 15th. The 103 ERA form is a schedule that is attached to the company business personal property tax return.

WAIVER OF NONCOMPLIANCE BACKGROUND

Fort Wayne Common Council has granted waivers of noncompliance previously but it has been limited to economic revitalization area (tax abatement) issues on projects involving real and personal property improvements. Waivers of noncompliance correct issues with late-filed paperwork including economic revitalization area designation applications and statement of benefits forms. A waiver of noncompliance may also be granted to correct clerical errors on designation applications and statement of benefits forms. Prior to 2006, the waiver of noncompliance was limited to initiation of development and clerical problems. In 2006, the waiver of noncompliance was expanded to include late-filed deduction paperwork including those deductions granted by council for tax abatement as well as for deductions for projects in residentially distressed areas.

As with previous waivers of noncompliance granted to property owners requesting economic revitalization area designation on their investment for tax abatement, the procedural or clerical error must be corrected before council approves a resolution adopting a waiver of noncompliance. Indiana Code also requires that council conduct a public hearing on the waiver of noncompliance. Indiana Code also allows council to consider whether the waiver of noncompliance granted would result in a delay in the issuance of tax bills, require the recalculation of tax rates or tax levies for a particular year or otherwise cause a hardship or burden on the taxing unit.

Community Development Division staff has never received a request to approve a waiver of noncompliance for a project approved for a vacant building tax abatement. Community Development Division staff have been working with the Allen County Auditor's office to resolve the late deduction paperwork (Form 322/VBD) for Cyco Properties, LLC. The auditor's office has agreed that upon approval of the waiver that it will allow the deduction for 2013 payable 2014.

CYCO PROPERTIES, LLC BACKGROUND

Cyco Properties, LLC purchased an existing vacant industrial building at 6201 Discount Drive. The company applied for and received approval on a vacant building abatement and real and personal property abatement/phase-in in December 2012 under Confirming Resolution R-87-12. The company planned to invest \$100,000 in improvements to the building including constructing additional offices and a new loading dock and \$36,000 in new information technology and logistical distribution equipment.

CYCO PROPERTIES, LLC ISSUE

Fort Wayne Community Development Division staff worked closely with the Allen County Auditor's office staff in June 2013 to notify companies with ERA designations that Notices of New Assessment (Form 11s) had been sent and it was time to file their deduction paperwork. This year Notices of New Assessment (Form 11) were sent on June 28, 2013. In order for the deduction forms to be filed on time they would need to be submitted by July 29, 2013 since July 28, 2013 fell on a Sunday. An email from city staff was sent to Cyco Properties, LLC representatives on July 5, 2013, informing them that they should have received their Form 11s in the mail and it was time to file. Attached is a copy of the email that was sent by staff. Representatives with Cyco Properties, LLC contacted the Allen County Auditor's Office and the City of Fort Wayne Community Development staff August 14, 2013,

Waiver of Noncompliance Memo

inquiring about the vacant building tax abatement forms. I informed Cyco Properties, LLC representatives that they would be able to request a waiver of noncompliance from Fort Wayne Common Council to allow them to file for the deduction. A copy of the letter is attached to this memo. Further, Cyco Properties, LLC has filed the necessary deduction paperwork with the Allen County Auditor's Office. Attached is a copy of their Form 322/VBD.

Elissa McGauley

From: Adam Welch
Sent: Friday, July 05, 2013 11:00 AM
To: jeffc@unitysales.net
Cc: Elissa McGauley
Subject: Tax Abatement Paperwork
Attachments: IN ORDER TO RECEIVE TAX ABATEMENT2013.pdf; Cyco Form 11.pdf; 322re.pdf; 322vbd.pdf

Jeff,

I hope all is well. Elissa McGauley recently asked me to email you to let you know that the Notices of New Assessment (Form 11) were sent out from the county assessor's offices last week. Cyco Properties' property showed an increase of \$105,000 in increased assessed value. I'm not sure whether the increase was a result of any work that has been done on the building, but thought this would be a good time for you to file the deduction paperwork. You have 30 days from the date on the form to file the 322/RE packet with the county auditor's office.

Also, because Cyco Properties received a Vacant Building Abatement, a 322/VBD form will also need to be filed with the county auditor's office.

Attached is a copy of the Form 11, a clean 322/RE form, a clean 322/VBD form, and instructions on how to file. Let Elissa or I know if you have any questions! We would be happy to help you complete the paperwork.

Sincerely,

Adam Welch

Economic Development Specialist
Fort Wayne Community Development Division
200 E. Berry Street, Suite 320
Fort Wayne, IN 46802
Phone: 260-427-5814

August 30, 2013

Elissa McGauley, AICP
FORT WAYNE COMMUNITY DEVELOPMENT DIVISION
Citizens Square
200 East Berry St., Suite #320
Fort Wayne, IN 46802

RE: CYCO Properties; LLC Tax Abatement

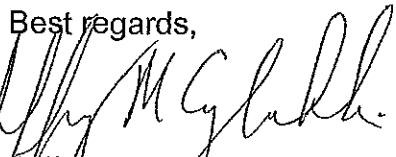
Dear Ms. McGauley,

I am writing you regarding the tax abatement for our facility at 6201 Discount Drive. I recently became aware of the property having two separate abatements attached to the property. The Vacant Building Abatement carried required its own Form 322 to be completed by August 5th. When I received the e-mail regarding the forms, I looked to an earlier e-mail between the both of us indicating my paperwork did not need to be refilled again until 2014. After further review, I became aware of the two types of abatements and completed the necessary forms the week after they were due.

This process has been a learning experience for me given the fact it is my first building having this tax credit. As I now understand the process, I will make sure all forms are completed in a timely matter.

Now that the Form 322 has been completed I would respectfully request the Vacant Building Deduction be applied to the coming years tax bill. Please let me know if there is any additional information necessary to complete this process.

Best regards,



Jeffery M. Cypulski
Owner – Cyco Properties; LLC



APPLICATION FOR DEDUCTION FROM ASSESSED VALUATION REAL PROPERTY VACANT BUILDING DEDUCTION

State Form 53179 (R / 3-13)

Prescribed by the Department of Local Government Finance

20____ PAY 20____

FORM 322 / VBD

INSTRUCTIONS:

1. This form is to be filed with the county auditor of the county in which the eligible vacant building is located.
2. To obtain a vacant building deduction, a Form 322/VBD must be filed with the county auditor before May 10 in the year in which the property owner or his tenant occupies the vacant building or not later than thirty (30) days after the assessment notice is mailed to the property owner if it was mailed after April 10. If the property owner misses the May 10 deadline in the initial year of occupation, he can apply between March 1 and May 10 of a subsequent year.
3. The eligible vacant building must have been unoccupied for at least one (1) year and be zoned for commercial or industrial purposes.
4. A copy of the approved Form SB-1/VBD, the resolution adopted by the designating body, and the Form CF-1/VBD must be attached to this application.
5. A property owner who files this form must provide the county auditor and the designating body with a Form CF-1/VBD to show compliance with the approved Form SB-1/VBD. The Form CF-1/VBD must also be updated and provided to the county auditor and the designating body for each assessment year in which the deduction is applicable.

SECTION 1 PROPERTY INFORMATION			
Address of property (number and street, city, state, and ZIP code) 6201 Discount Drive, Fort Wayne IN 46818			
County Allen	Township Washington	DLGF Taxing District number FW Washington	Parcel number
Name of owner CYCO Properties, LLC		Name of contact person Jeffery Cybulski	
Mailing address of owner (number and street, city, state, and ZIP code) 10331 Dawson's Creek Blvd Suite A Ft Wayne IN 46825			
Telephone number (260) 602-5629	Fax number (260) 497-9350	E-mail address (optional) jeffc@unitysales.net	

SECTION 2 REQUEST FOR DEDUCTION AND DESCRIPTION OF BENEFIT TO TAXING JURISDICTION			
Describe the real property investment The building is a 22,000 sq ft building used for inventory management and distribution. The building had been vacant for three years. It is broke into two buildings connected by a breezeway containing a common truck dock. We added offices and a conference room prior to moving in.			
Total cost of the real property investment \$420,000 for the building \$135,000 for improvements			
Is this property within an Economic Revitalization District (ERA)? ☐ Yes ☐ No		Is this property within a Tax Increment Financing (TIF) district as defined in IC 6-1.1-21.2-3? ☐ Yes ☐ No	
ASSESSED VALUE OF LAND \$ 84,900	ASSESSED VALUE OF IMPROVEMENTS \$ 105,000	ASSESSED VALUE OF LAND AND IMPROVEMENTS (TOTAL AV) \$ 189,900	*ASSESSED VALUE OF ELIGIBLE VACANT BUILDING \$ 410,900
*Note: The assessed value that qualifies for this deduction is the assessed value of the eligible vacant building as defined in IC 6-1.1-12.1.			
I hereby certify that the above named taxpayer is liable for property taxes at the above listed location on the indicated assessment date and that the representations on this application are true and correct. I further certify that the real property investment identified above is eligible for the vacant building deduction as outlined in IC 6-1.1-12.1-4.8 and IC 6-1.1-12.1-16.			
Signature of owner or representative (if representative, attach power of attorney) Jeffery Cybulski			Date signed (month, day, year) 8/16/13
Printed name of signatory Jeffery Cybulski		Title Owner	Telephone number of preparer (260) 602-5629

FOR USE BY COUNTY AUDITOR			
TYPE AND YEAR OF DEDUCTION	ELIGIBLE ASSESSED VALUE *	DEDUCTION PERCENTAGE	DEDUCTION BEFORE LIMIT **
Eligible vacant building - One (1) Year (IC 6-1.1-12.1-4.8)			
Year One (1) 3-1-20____ payable in 20____	\$	100%	\$
Eligible vacant building - Two (2) Years (IC 6-1.1-12.1-4.8)			
Year One (1) 3-1-20____ payable in 20____	\$	100%	\$
Year Two (2) 3-1-20____ payable in 20____	\$	50%	\$
Eligible vacant building - Three (3) Years (IC 6-1.1-12.1-4.8 & IC 6-1.1-12.1-16(b))			
Year One (1) 3-1-20____ payable in 20____	\$	100%	\$
Year Two (2) 3-1-20____ payable in 20____	\$	50%	\$
Year Three (3) 3-1-20____ payable in 20____	\$	50%	\$
Enhanced eligible vacant building - One (1) Year (IC 6-1.1-12.1-16) ***			
Year One (1) 3-1-20____ payable in 20____	\$	100%	\$
Enhanced eligible vacant building - Two (2) Years (IC 6-1.1-12.1-16) ***			
Year One (1) 3-1-20____ payable in 20____	\$	100%	\$
Year Two (2) 3-1-20____ payable in 20____	\$	100%	\$
Enhanced eligible vacant building - Three (3) Years (IC 6-1.1-12.1-16) ***			
Year One (1) 3-1-20____ payable in 20____	\$	100%	\$
Year Two (2) 3-1-20____ payable in 20____	\$	100%	\$
Year Three (3) 3-1-20____ payable in 20____	\$	100%	\$
** Application of the limits from IC 6-1.1-12.1-4.8(k) as determined by the designating body on the Form SB-1/VBD (Page 2, Letter C).			
Year One (1) 3-1-20____ payable in 20____	Enter eligible deduction as determined above	\$	
	Enter limit determined by the designating body from SB-1	\$	
The approved deduction for this assessment date is the lesser of the two (2) numbers above.			\$
Year Two (2) 3-1-20____ payable in 20____	Enter eligible deduction as determined above	\$	
	Enter limit determined by the designating body from SB-1	\$	
The approved deduction for this assessment date is the lesser of the two (2) numbers above.			\$
Year Three (3) 3-1-20____ payable in 20____	Enter eligible deduction as determined above	\$	
	Enter limit determined by the designating body from SB-1	\$	
The approved deduction for this assessment date is the lesser of the two (2) numbers above.			\$
*The deduction is for the assessed value of the eligible vacant building as defined by IC 6-1.1-12.1-1(17). The amount of the deduction shall be adjusted to reflect the percentage increase or decrease in assessed valuation resulting from a general reassessment or a cyclical reassessment. If an appeal of the assessment is approved that results in a reduction of the assessed value, the deduction shall be adjusted to reflect the percentage decrease that resulted from the appeal. (IC 6-1.1-12.1-4.8(j)) **Statutory Limits under IC 6-1.1-12.1-4.8(k): The maximum amount of a deduction to the assessed value under this section may not exceed the lesser of: (1) the annual amount for which the eligible vacant building was offered for lease or rent by the owner or a previous owner during the period the eligible vacant building was unoccupied; or (2) an amount, as determined by the designating body in its discretion, that is equal to the annual amount for which similar buildings in the county or contiguous counties were leased or rented or offered for lease or rent during the period the eligible vacant building was unoccupied. *** IC 6-1.1-12.1-16(a): This section applies to property that is the subject of a deduction application filed after June 30, 2011, if: (1) property that is the subject of a deduction application is an eligible vacant building with at least fifty thousand (50,000) square feet and, as a condition of obtaining the deduction, the deduction applicant agrees to use the eligible vacant building for industrial or commercial purposes; (2) as a condition of obtaining a deduction under this chapter, the deduction applicant agrees to invest at least ten million dollars (\$10,000,000) in property that is eligible for a deduction under this chapter; (3) property that is the subject of a deduction application consists of a proposed rehabilitation of property in a designated downtown area; or (4) the property that is the subject of a deduction application is or will be located in a county in which: (A) the average annualized unemployment rate in each of the two (2) calendar years immediately preceding the current calendar year exceeded the statewide average annualized unemployment rate for each of the same calendar years by at least two percent (2%); or (B) the average annualized unemployment rate in the immediately preceding calendar year was at least double the statewide average annualized unemployment rate for the same period; as determined by the Department of Workforce Development.			
APPROVAL OF COUNTY AUDITOR (COMPLETE ONLY IF APPROVED)			
This application is approved in the amounts shown above.			
Signature of County Auditor			Date signed (month, day, year)